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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: 

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INTERNATIONAL BUSINESS MACHINES  
7 CORPORATION

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 PAULA ALLISON, individually and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 INTERNATIONAL BUSINESS  
16 MACHINES CORPORATION, and DOES  
1 through 50, inclusive,

17 Defendant.

07 CV 1977 LAB CAB  
Case No. \_\_\_\_\_

DEFENDANT INTERNATIONAL  
BUSINESS MACHINES  
CORPORATION'S NOTICE OF  
REMOVAL OF CIVIL ACTION  
FROM STATE COURT

[18 U.S.C. 1332 AND 1446]

18  
19 TO THE CLERK OF THE ABOVE ENTITLED COURT:

20 PLEASE TAKE NOTICE THAT International Business Machines Corporation,  
21 ("Defendant"), Defendant in the above-titled action, hereby removes this matter to the United  
22 States District Court for the Southern District of California, pursuant to 28 U.S.C. § 1332, §1441,  
23 and § 1446. The grounds for removal are as follows:

24 Compliance with Statutory Requirements

25 1. On or about September 10, 2007, Plaintiff Paula Allison ("Plaintiff") filed a  
26 Complaint for Violations of the California Labor Code, Claims for Damages, Restitution, and  
27 Injunctive Relief in the Superior Court of the State of California for the County of San Diego,  
28 Case No. 37-2007-00074685-CU-OE-CTL, captioned *Paula Allison, individually and on behalf*

1 of all others similarly situated, *v. International Business Machines Corporation, and DOES 1*  
 2 *through 50, inclusive*. In her Complaint, Plaintiff asserts claims for Failure to Pay Overtime  
 3 (California Labor Code §§ 510, 1194 and 1198); Waiting Time Penalties (California Labor Code  
 4 §§ 201-203); Failure to Provide Accurate Itemized Wage Statements (California Labor Code §  
 5 226); and Unfair Practice Under the Unfair Competition Act (California Business and Professions  
 6 Code § 17200 *et seq.*).

7 2. In this matter, Plaintiff seeks class action certification of a class that would include  
 8 "Plaintiff and all other persons who were, are, or will be employed by IBM in California as 'PBX  
 9 Analysts' (that is, technical analysts, telecom analysts, voice network analysts or any other job  
 10 position with primary duties of installing, supporting, upgrading, and/or maintaining PBX  
 11 telephones) in the State of California at any time within the four years prior to the date of the  
 12 filing of this Complaint through the date of the final disposition of this action ... and who were,  
 13 are, or will be classified as exempt from overtime pay under California law." Complaint, ¶ 1.

14 3. On September 12, 2007, Plaintiff served Defendant with the Complaint.  
 15 Defendant's removal of this action is timely because Defendant is removing this matter within 30  
 16 days of Plaintiff's completion of service. *See* 28 U.S.C. § 1446(b).

17 4. In accordance with 28 U.S.C. § 1446(a), attached hereto as Exhibit A are true and  
 18 correct copies of all process, pleadings, and orders in this action.

19 5. Pursuant to 28 U.S.C. § 1446(d), Defendant promptly will provide written notice  
 20 of removal of the Action to Plaintiff, and promptly will file a copy of this Notice of Removal with  
 21 the Clerk of the Superior Court of the State of California, County of San Diego.

22 **Jurisdiction: Traditional Diversity**

23 6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, as this is  
 24 an action between "citizens of different States" and the "matter in controversy exceeds the sum or  
 25 value of \$75,000, exclusive of interest and costs."

26 7. The parties to this action are citizens of different states. *See* 28 U.S.C. §  
 27 1332(a)(1); *see also Gibson v. Chrysler Corp.*, 261 F.2d 927, 931 n.2 (9th Cir. 2001) ("The  
 28 complete diversity requirement in class actions is based on the citizenship of the named plaintiffs

1 at the time the action is filed.”). For its part, Defendant is a citizen of New York. *See* 28 U.S.C.  
2 § 1332(c)(1). Defendant is a corporation incorporated under the laws of the State of New York,  
3 with a principal place of business in that State. (Complaint, ¶ 10.) Plaintiff, on the other hand,  
4 alleges that she resides in California. (Complaint, ¶ 13.) Thus, based upon information and  
5 belief, Plaintiff was a citizen of the State of California at the time she filed this action, and still is.

6 8. In addition, and although Defendant does not concede liability, the amount in  
7 controversy exceeds \$75,000. *See* 28 U.S.C. § 1332; *see also Gibson*, 261 F.3d at 941 (noting  
8 that, under the traditional diversity analysis, the amount-in-controversy analysis involves an  
9 examination of “only the claims of named class plaintiffs”). In her Complaint (at ¶¶ 30, 35, 40),  
10 Plaintiff does not allege a specific dollar amount in damages, but she seeks the recovery of  
11 overtime wages, waiting time penalties, penalties for failing to pay itemized wage statements, and  
12 attorneys’ fees. *See, e.g., Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, (9th Cir. 1998) (“[W]here  
13 an underlying statute authorizes an award of attorneys’ fees, either with mandatory or  
14 discretionary language, such fees may be included in the amount in controversy.”); *Simmons v.*  
15 *PCR Tech.*, 209 F.Supp.2d 1029, 1035 (N.D. Cal. 2002) (holding that where attorneys fees are  
16 “recoverable by statute,” fees reasonably anticipated over the life of the litigation are included in  
17 the amount-in-controversy analysis). As such, Plaintiffs’ individual claims meet the traditional  
18 amount-in-controversy threshold necessary to establish this Court’s diversity jurisdiction:

19 a. Overtime Plaintiff alleges that she was employed by Defendant from September  
20 2003 until September 2004, earning approximately \$82,000 annually. (Complaint, ¶ 9.) Plaintiff  
21 further alleges that she worked between 45 hours and 60 hours per week, without receiving  
22 overtime compensation from Defendants. (Complaint, ¶ 17.) Assuming that Plaintiff allegedly  
23 averaged fifty-hour workweeks, Plaintiff’s claim for unpaid overtime alone places in controversy  
24  
25  
26  
27  
28

1 at least \$30,747.60.<sup>1</sup>

2 b. Waiting Time and Wage Statement Penalties Given Plaintiff's alleged salary with  
3 Defendant, and the length of her employment, her claim for waiting time penalties places in  
4 controversy an additional \$9,460.80,<sup>2</sup> and her claim for alleged wage statement violations places  
5 in controversy an additional \$2,350.<sup>3</sup>

6 c. Attorneys' Fees. Attorneys' fees claimed by Plaintiff and attributable to her would  
7 exceed \$33,000 – the amount that, when added to *minimum* amounts in controversy due to  
8 Plaintiff's overtime claim and her claims for statutory penalties, would satisfy 28 U.S.C.  
9 § 1332(a)'s \$75,000 jurisdictional threshold. For instance, considering only Plaintiff's individual  
10 claims, and assuming a very conservative \$300 per hour billable rate, Plaintiff would claim  
11 \$33,000 in fees after only 110 hours of work.

12 9. In short, then, considering only Plaintiff's individual claim, the amount in  
13 controversy in this matter exceeds \$75,000 (\$30,747.60 + \$9,460.80 + \$2,350 + \$33,000).  
14 Moreover, because the Court has original jurisdiction pursuant to 1332(a) over Plaintiff's claims,  
15 it has supplemental jurisdiction that extends to the claims of the unnamed putative class members.  
16 *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 549 (2005) (holding that “where  
17 the other elements of [diversity] jurisdiction are present and at least one named plaintiff in the  
18 action satisfies the amount-in-controversy requirement, § 1367 does authorize supplemental  
19 jurisdiction over the claims of other plaintiffs in the same Article III case or controversy, even if

20  
21 <sup>1</sup> The amount of alleged unpaid overtime was calculated as follows:

22 Step 1: Divide Plaintiff's alleged yearly salary (\$82,000) by 2080 hours to derive Plaintiff's  
23 regular rate of pay (\$39.42) (*see* Cal. Lab. Code § 515(d)); then multiply the regular rate by 1.5 to  
24 calculate the alleged overtime rate of pay:

25 
$$\$82,000 \div 2080 \times 1.5 = \$59.13$$

26 Step 2: Multiply the overtime rate of pay (\$59.13) by ten hours of overtime (based on Plaintiff's  
27 allegations of hours worked per week) and then by Plaintiff's tenure (52 weeks):

28 
$$59.13 \times 10 \times 52 = \$30,747.60$$

<sup>2</sup> The amount of alleged waiting time penalties equals Plaintiff's regular rate of pay  
(\$39.42) x 8 hours per day x 30 days. *See* Cal. Lab. Code § 203.

<sup>3</sup> Plaintiff will seek alleged wage statement penalties calculated as follows: First  
Violation (first pay period) (\$50) + Subsequent Violations (\$100 x the 23 remaining pay periods  
during Plaintiff's tenure), based on Cal. Lab. Code § 226.

1 those claims are for less than the jurisdictional amount specified in the statute setting forth the  
 2 requirements for diversity jurisdiction”); *Gibson*, 261 F.3d at 940 (holding that “there is  
 3 supplemental jurisdiction over the claims of unnamed class members when the claim of an  
 4 individual named plaintiff satisfies the amount-in-controversy requirement”).

5 10. In alleging the amount in controversy, Defendant does not concede that Plaintiff  
 6 was misclassified as an exempt employee, or that she ever worked more than forty hours per  
 7 workweek, or more than eight hours per day, or that she is entitled to overtime pay, or any of the  
 8 penalties or related damages alleged in the Complaint, or that Plaintiff’s computation of alleged  
 9 damages would be deemed correct. Nor does Defendant concede that any or all of its current or  
 10 former employees who perform(ed) PBX-related duties were misclassified as exempt employees  
 11 or are appropriately included in the putative class.

#### 12 **Jurisdiction – Class Action Fairness Act**

13 11. In addition, this Court has original jurisdiction over this matter pursuant to 28  
 14 U.S.C. § 1332(d) (as amended by the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119  
 15 Stat. 14 (“CAFA”)). Under Section 1332(d), federal courts have original diversity jurisdiction  
 16 over a class action whenever: (1) “any member of a [putative] class of plaintiffs is a citizen of a  
 17 State different from any defendant,” 28 U.S.C. § 1332(d)(2)(A), and (2) “the matter in  
 18 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs,” 28 U.S.C.  
 19 § 1332(d)(2). All CAFA requirements are satisfied in this case.

20 12. First, this is a class action. *See* 28 U.S.C. §§ (d)(1)(B) & (d)(5)(B). Plaintiff seeks  
 21 to represent a class of “PBX Analysts,” and she alleges that the class is “so numerous that joinder  
 22 of all members is impractical.” (Complaint, ¶ 20.) Moreover, although the term “PBX Analyst”  
 23 does not correspond to a company-specific position, initial investigation has revealed that, during  
 24 Plaintiff’s brief one-year tenure, Defendant employed in California approximately 30 persons  
 25 who performed duties similar to those of Plaintiff, and if there were an equal number of persons  
 26 over the four-year statute of limitations applicable to certain of the claims in this case, the number  
 27 could total over 100. *Cf.* Senate Report No. 109-14 (2005) (“For example, in cases in which it is  
 28 unclear whether ‘the number of members of all proposed plaintiff classes in the aggregate is less



than 100,' a federal court should err in favor of exercising jurisdiction over the matter.'").

13. Second, as noted above, Plaintiff (California) and Defendant (New York) are citizens of separate states. See 28 U.S.C. § 1332(d)(2). In addition, minimal diversity exists for purposes of this Court's exercise of jurisdiction under CAFA because Plaintiff's putative class consists of persons who "were, are, or will be employed by [Defendant] in California."

Complaint, ¶ 1.

14. Finally, though Defendant concedes neither liability on Plaintiff's claims nor the propriety or breadth of the class as alleged by Plaintiff, the Complaint places in controversy a sum greater than \$5,000,000 under CAFA. *See* 28 U.S.C. § 1332(d). Assuming that the amounts in controversy detailed above for Plaintiff's overtime and penalties claims are typical for members of Plaintiff's putative class, and further assuming a class of 100 persons, as is required under CAFA for removal, the potential class recovery for damages and penalties alone would total \$4,265,740.00.<sup>4</sup> (Given Plaintiff's very brief tenure during the relevant limitations period, the amount in controversy for other potential class members may well exceed the amount in controversy for Plaintiff.) Assuming a class of over 100 persons, one would anticipate that the amount of attorneys' fees class counsel will seek in this case would exceed the \$734,260 required to put in controversy more than \$5,000,000 for purposes of CAFA jurisdiction.

WHEREFORE, the above-titled Action is hereby removed to this Court from the Superior Court of the State of California, County of San Diego.

Dated: October 12, 2007

Respectfully submitted,

Jones Day

By: 

Catherine S. Nasser

Counsel for Defendant  
INTERNATIONAL BUSINESS MACHINES  
CORPORATION

<sup>4</sup> This amount was determined based upon the following formula:  $100 \times (\$30,747.60 + \$9,460.80 + \$2,350)$ .

# **EXHIBIT A**

COPY

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14 Attorneys for the individual and representative Plaintiff  
 15 (additional counsel listed on signature page)

16 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

17 COUNTY OF SAN DIEGO

Case No. 37-2007-00074885-CU-OE-CTL

18 PAULA ALHISON; individually and on  
 19 behalf of all others similarly situated,

20 Plaintiff,

21 vs.

22 INTERNATIONAL BUSINESS  
 23 MACHINES CORPORATION, and  
 24 DOES 1 through 50, inclusive,

25 Defendants.

**COMPLAINT FOR VIOLATIONS OF THE  
 CALIFORNIA LABOR CODE; CLAIMS  
 FOR DAMAGES, RESTITUTION, AND  
 INJUNCTIVE RELIEF**

- (1) Failure to Pay Overtime in Violation of California Labor Code Sections 510, 1194 and 1198, and IWC Wage Orders;
- (2) Waiting Time Penalties;
- (3) Failure to Provide Itemized Wage Statements; and
- (4) Violation of California Business and Professions Code Section 17200 *et seq.*

DEMAND FOR JURY TRIAL

BY FAX

COMPLAINT FOR DAMAGES, RESTITUTION, AND INJUNCTIVE RELIEF



1 Individual and Representative Plaintiff Paula Allison, on behalf of herself and on behalf  
 2 of all others similarly situated, complains against Defendant International Business Machines  
 3 Corporation ("IBM") and DOES 1 through 50 inclusive, as follows:

4  
 5 **PRELIMINARY STATEMENT**

6 1. The class claims in this action are brought pursuant to Code of Civil Procedure  
 7 ("CCP") § 382, seeking unpaid overtime wages penalties, injunctive and other equitable relief,  
 8 interest, and reasonable attorneys' fees and costs, under, among others, California Labor Code §§  
 9 201, 202, 203, 226, 510, 558, 1174, 1174.5, 1194, Industrial Welfare Commission Wage Order  
 10 No. 4, Business and Professions Code § 17200 *et seq.*, and CCP §1021.5 on behalf of the  
 11 following proposed class:

12 Plaintiff and all other persons who were, are, or will be employed  
 13 by IBM in California as "PBX Analysts" (that is, technical analysts,  
 14 telecom analysts, voice network analysts or any other job position  
 15 with primary duties of installing, supporting, upgrading, and/or  
 16 maintaining PBX telephones) in the State of California at any time  
 17 within the four years prior to the date of the filing of this Complaint  
 through the date of the final disposition of this action (the "Class  
 Period"), and who were, are, or will be classified as exempt from  
 overtime pay under California law.

18 2. Under California Business and Professions Code ("Cal. Bus. & Prof. Code") §  
 19 17200 *et seq.*, and pursuant to both the class action and representative action procedures provided  
 20 for in these statutes, Plaintiff, on behalf of herself and proposed Class Members, also seeks  
 21 injunctive relief and restitution of all benefits Defendant IBM has received from its unlawful  
 22 actions as alleged herein.

23 3. The Class Period is designated as the four-year period prior to the filing of this  
 24 Complaint through the date of final disposition of this action. On information and belief, Plaintiff  
 25 alleges that from the start of the Class Period, IBM had a consistent policy and/or practice of  
 26 classifying PBX Analysts (that is, technical analysts, telecom analysts, voice network analysts,  
 27

1 and any other job position with primary duties of installing, and/or supporting, upgrading, and  
2 maintaining PBX telephones) in California as exempt from California's overtime laws and failing  
3 to pay persons holding these positions overtime wages as required by law.

4 4. From the start of the Class Period through the present, IBM had a consistent policy  
5 and/or practice of: (1) failing to pay overtime to PBX Analysts when these employees worked  
6 more than eight hours in a work day or more than 40 hours in a work week; (2) failing to provide  
7 these employees with accurate and complete itemized wage statements as required by law; and  
8 (3) failing to pay these employees who terminated employment with IBM all overtime wages due  
9 to them within 72 hours of their termination.

10 5. This case involves IBM employees who maintained and supported PBX phone  
11 systems for IBM and its customers. The term "PBX" is an acronym derived from "Private  
12 Branch aXchange" or "Personal automatic Branch aXchange," which is also known as a  
13 "PABX". A PBX is a phone system used within business entities that allows employees to  
14 communicate both between each other and with outside persons. PBX systems allow a business  
15 entity to have more employees than outside phone lines—many employees can communicate with  
16 each other within the system, and a smaller number of outside phone lines connect this system to  
17 persons outside of the business entity.

18 6. Plaintiff and Class Members spent or spend the majority of their time performing  
19 routine installations and maintenance for IBM and its customers concerning PBX telephones,  
20 following routine processes for doing so.

21 7. IBM unlawfully classified Plaintiff and Class Members as exempt from overtime  
22 payments under California law, despite the fact that they are not exempt. Plaintiff and Class  
23 Members worked overtime hours, as defined by California law, and are and have been entitled to  
24 premium compensation at one and one-half times the regular hourly rate ("overtime  
25 compensation") for those hours, and at twice the regular hourly rate for some overtime hours.  
26 IBM has willfully refused to pay Plaintiff and Class Members the required overtime  
27 compensation for overtime hours worked, and has failed to keep time records as required by law.

1 IBM has failed to keep accurate records of Plaintiff's and Class Members' overtime work. In  
 2 doing so, Defendant has failed to comply with California law.

3 8. Plaintiffs seek unpaid overtime pay, injunctive and declaratory relief, overtime  
 4 compensation for all overtime work required, suffered, or permitted by IBM, liquidated and/or  
 5 other damages and penalties as permitted by applicable law, interest, and attorneys' fees and  
 6 costs.

#### 7 THE PARTIES

8 9. Plaintiff Paula Allison was employed by IBM as a technical analyst from  
 9 September 2003 until September 2004. IBM paid Plaintiff a salary of approximately \$82,000 per  
 10 year. Plaintiff spent most of her work time maintaining and operating pre-existing software  
 11 included with the PBX telephone systems, following routine processes for doing so. Her duties  
 12 included routine set-up work associated with adding or moving employees who were using the  
 13 PBX system. Ms. Allison regularly worked in excess of forty hours per week and in excess of  
 14 eight hours per day, without receiving overtime compensation as required by California law.

15 10. Defendant IBM is a New York corporation providing computer services  
 16 throughout California, the United States and the world, with its corporate headquarters located in  
 17 Armonk, New York. The practices described herein were performed in IBM's offices in  
 18 California.

19 11. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their  
 20 true names and capacities are unknown to Plaintiff. When their true names and capacities are  
 21 ascertained, Plaintiff will amend this complaint by inserting their true names and capacities  
 22 herein. Plaintiff is informed and believe, and thereon alleges, that each of the fictitiously-named  
 23 Defendants is responsible in some manner for the occurrences herein alleged, and that the  
 24 damages sustained by Plaintiff and the Class Members herein alleged were proximately caused by  
 25 such Defendants.

26 12. Plaintiff is informed, believes, and thereon alleges that each of the Defendants  
 27 herein was, at all times relevant to this action, the agent, employee, representing partner, and/or  
 28

1 joint venturer of the remaining Defendants and was acting within the course and scope of the  
 2 relationship. Plaintiff is further informed, believes, and thereon alleges, that each of the  
 3 Defendants herein gave consent to, ratified, and authorized the acts alleged herein to the  
 4 remaining Defendants.

#### 5 6 VENUE

7 13. Venue in the County of San Diego is proper because Plaintiff worked for IBM in  
 8 this County, and its liability arose, in part, in this County. Plaintiff also resides in this county.

#### 9 GENERAL ALLEGATIONS

##### 10 11 A. Background on IBM's PBX Analysts

12 14. IBM employs PBX Analysts to maintain and support its PBX phone systems.

13 15. The job of Plaintiff and Class Members is and was to provide routine maintenance,  
 14 and support of PBX telephones. Their primary duties include maintaining and supporting  
 15 software included with the PBX telephone systems, following routine processes for doing so.  
 16 Their duties included routine software set-up work associated with adding or moving employees  
 17 who were using the PBX system.

18 16. Plaintiff and Class Members are and were primarily engaged in nonexempt work  
 19 which did not meet the test of any exemption, was not directly and closely related to exempt  
 20 work, and did not involve the customary and regular exercise of discretion and independent  
 21 judgment.

##### 22 B. IBM's Practice Regarding Overtime

23 17. On information and belief, Plaintiff alleges that from the start of the Class Period  
 24 until the present, IBM classified Plaintiff and all Class Members as exempt from overtime wages.  
 25 Plaintiff and Class Members regularly worked in excess of 8 hours per day and 40 hours per week  
 26 without compensation for their overtime hours. Plaintiff's schedule regularly required her to  
 27 work 45 hours per week or more, sometimes working as much as 50-60 hours per week.



1 (e) Whether IBM's policy and practice of failing to pay its employees  
 2 all wages due within the time required by law after their employment ended violates California  
 3 law; and

4 (f) The proper measure of damages sustained and the proper measure  
 5 of restitution recoverable by Class Members.

6 22. Plaintiff's claims are typical of the claims of the Class Members. Plaintiff, like  
 7 other Class Members, was subjected to IBM's common policy and practice of classifying all PBX  
 8 Analysts as exempt from overtime and refusing to pay overtime in violation of California law.  
 9 Plaintiff's job duties were typical of those of other Class Members.

10 23. Plaintiff will fairly and adequately protect the interests of the members of the  
 11 Class. Plaintiff has retained counsel competent and experienced in complex class actions and  
 12 California labor and employment litigation.

#### 13 FIRST CAUSE OF ACTION

#### 14 UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME WAGES 15 (Wage Order No. 4; California Labor Code §§ 510, 1194)

16 24. Plaintiff incorporates by reference in this cause of action each allegation of  
 17 paragraphs 1 through 23 inclusive, as though fully set forth herein.

18 25. California law requires an employer, such as IBM, to pay overtime compensation  
 19 to all non-exempt employees for all hours worked over 40 per week, or over eight per day.

20 26. Plaintiff and Class Members are non-exempt employees entitled to be paid  
 21 overtime compensation for all overtime hours worked.

22 27. Throughout the Class Period, and continuing to the present, the Plaintiff and Class  
 23 Members worked in excess of eight hours in a workday and/or 40 hours in a workweek.

24 28. Throughout the Class Period, IBM misclassified Plaintiff and Class Members as  
 25 exempt from overtime pay entitlement and failed and refused to pay them overtime pay for their  
 26 overtime hours worked.



1       29. On information and belief, Plaintiff alleges that IBM's failure to pay overtime was  
2 done willfully, in bad faith, in knowing violation of the California Labor Code, and with malice.

3       30. As a direct and proximate result of IBM's unlawful conduct, as set forth herein,  
4 Plaintiff and Class Members have sustained damages, including loss of earnings for hours of  
5 overtime worked on behalf of IBM in an amount to be established at trial, prejudgment interest,  
6 and costs and attorneys' fees, pursuant to statute and other applicable law.

7                                   **SECOND CAUSE OF ACTION**  
8                                   **WAITING TIME VIOLATIONS**  
9                                   **(California Labor Code §§ 201-203)**

10       31. Plaintiff incorporates by reference in this cause of action each allegation of  
11 paragraphs 1 through 30, inclusive, as though fully set forth herein.

12       32. California Labor Code §§ 201 and 202 require an employer to pay its employees  
13 all wages due within the time specified by law. Labor Code § 203 provides that if an employer  
14 willfully fails to pay such wages, the employer must continue to pay the subject employees'  
15 wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty  
16 days of wages.

17       33. Plaintiff and all other Class Members who ceased employment with IBM are  
18 entitled to unpaid compensation, but to date have not received such compensation.

19       34. More than thirty days have passed since Plaintiff and certain Class Members left  
20 IBM's employ.

21       35. As a consequence of IBM's willful failure to timely compensate Plaintiff and  
22 Class Members for all hours worked, the Plaintiff and Class Members whose employment ended  
23 during the Class Period are entitled to thirty days' wages under Labor Code § 203, together with  
24 interest thereon and attorneys' fees and costs.

25                                   **THIRD CAUSE OF ACTION**  
26                                   **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**  
27                                   **(California Labor Code §§ 226)**

3 37. California Labor Code § 226(a) provides that, at the time of each payment of  
4 wages, an employer shall provide each employee with a wage statement itemizing, among other  
5 things, the total hours worked by the employee in the pay period.

6 38. California Labor Code § 226(e) provides that an employee suffering injury as a  
7 result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is  
8 entitled to recover the greater of his or her actual damages or a penalty of \$50 for the initial pay  
9 period in which a violation occurs and \$100 per employee for each violation in a subsequent pay  
10 period (up to a maximum of \$4,000), in addition to attorneys fees and costs.

39. IBM knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff and Class Members in accordance with Labor Code §226. At all times relevant herein, Defendant has failed to maintain records of hours worked by Plaintiff and Class Members as required under Labor Code § 1174(d). The wage statements provided to Plaintiff and Class Members have not accurately reflected actual gross wages earned, the total hours worked by employees, and their accurate hourly wage rates. IBM's failure to provide accurate, itemized wage statements to Plaintiff and Class Members caused injury to them, by, among other things, impeding them from knowing the amount of wages to which they are and were entitled and putting them to the time and expense of having to show when they worked and how many hours they worked.

20     hours they worked.

21             40. Plaintiff and the Class Members are therefore entitled to the damages and penalties

22     provided for under Labor Code § 226(e).

**FOURTH CAUSE OF ACTION**  
**UNFAIR PRACTICE UNDER THE UNFAIR COMPETITION ACT**  
**(California Business and Professions Code §§ 17200 et seq.)**

41. Plaintiff incorporates by reference in this cause of action each allegation of paragraphs 1 through 40, inclusive, as though fully set forth herein.

43. Defendant's course of conduct, acts, and practices in violation of the California laws mentioned above constitute a separate and independent violation of the UCL. Defendant's conduct described herein violates the policy or spirit of such laws or otherwise significantly threatens or harms competition.

44. The harm to Plaintiff and the Class in being wrongfully denied lawfully earned wages outweighs the utility—if any—of IBM's policies or practices and, therefore, IBM's actions described herein constitute an unfair business practice or act within the meaning of the UCL.

45. Pursuant to Business and Professions Code § 17200 *et seq.*, Plaintiff and the Class Members are entitled to restitution of the overtime earnings and other unpaid wages alleged herein that were withheld and retained by Defendant IBM during a period that commences four years prior to the filing of this action, a permanent injunction requiring Defendant IBM to pay overtime to all workers as defined herein, in California, an award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable law, and costs.

19 46. WHEREFORE, the Plaintiff, on behalf of herself and the proposed Class, requests  
20 judgment and the following specific relief against Defendant IBM as follows:

21 A. That the Court determine that this action may be maintained as a class action under  
22 Code of Civil Procedure § 382;

23 B. That IBM is found to have violated the overtime provisions of the Labor Code and  
24 Wage Orders as to Plaintiff and the Class;

1 C. That IBM is found to have violated §§ 201, 202, and 203 of the California Labor  
2 Code for willful failure to pay all compensation owed at the time of separation to Plaintiff and the  
3 Class Members no longer employed by IBM;

4 D. That IBM is found to have violated Labor Code § 226 for willful failure to provide  
5 the required itemized wage statements to Plaintiff and the Class Members;

6 E. That IBM's violations as described above are found to be willful;

7 F. That Plaintiff and the Class receive an award in the amount of unpaid wages owed,  
8 including interest thereon, and penalties subject to proof at trial;

9 G. That IBM is ordered and enjoined to pay restitution to Plaintiff and the Class for  
10 amounts acquired through IBM's unlawful activities, pursuant to Business and Professions Code  
11 §§ 17200 *et seq.*;

12 H. That IBM is further enjoined to cease and desist from unlawful activities in  
13 violation of California Business and Professions Code § 17200;

14 I. That Plaintiffs and the Class receive an award of reasonable attorneys' fees and  
15 costs pursuant to Code of Civil Procedure § 1021.5, Labor Code § 1194, and/or other applicable  
16 law; and

17 O. That the Court order further relief, in law or equity, as it deems appropriate and  
18 just.

19 Respectfully submitted,

20  
21 DATED: September 10, 2007

RUKIN HYLAND DORIA & TINDALL LLP

22  
23  
24 By: 

Steven M. Tindall

1 Jeffrey Lewis  
2 Todd Jackson  
3 LEWIS, FEINBERG, LEE, RENAKER & JACKSON,  
4 LLC

5 James M. Finberg  
6 Eve H. Cervantez  
7 ALTSHULER BERZON, LLP  
8 177 Post Street, Suite 300  
9 San Francisco, CA 94111  
10 Telephone: (415) 421-7151  
11 Facsimile: (415) 362-8064

12 Steven G. Zieff  
13 David A. Lowe  
14 RUDY, EXELROD & ZIEFF, LLP  
15 351 California Street, Suite 700  
16 San Francisco, CA 94104  
17 Telephone: (415) 434-9800  
18 Facsimile: (415) 434-0513

19 Kelly M. Dermody  
20 Jahan C. Sagafi  
21 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
22 275 Battery Street, 29<sup>th</sup> Floor  
23 San Francisco, CA 94111

24 David Borgen  
25 GOLDSTEIN DEMCHAK BALLER, BORGAN &  
26 DARDARIAN  
27 300 Lakeside Drive, Suite 1000  
28 Oakland, CA 94612  
Telephone: (510) 763-9800  
Facsimile: (510) 835-1417

Attorneys for Individual and Representative Plaintiff

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury of her claims to the extent authorized by law.

DATED: September 10, 2007

RUKIN HYLAND DORIA & TINDALL LLP

By: 

Steven M. Tindall

Jeffrey Lewis  
Todd Jackson  
LEWIS, FEINBERG, LEE, RENAHER & JACKSON,  
LLC

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DARDARIAN  
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Oakland, CA 94612  
Telephone: (510) 763-9800  
Facsimile: (510) 835-1417

Attorneys for Individual and Representative Plaintiff



COPY

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Print name, state bar number, and address): Steven M. Tindall (State Bar No. 178336), Rinkin Hyland Doris & Tindall LLP 100 Pine Street, Suite 725 San Francisco, CA 94111 TELEPHONE NO.: 415-421-1800 FAX NO.: 415-421-1700 ATTORNEY FOR: Plaintiff Paula Allison		FOR COURT USE ONLY SEP 10 PM 4:00 CLERK SAN DIEGO COUNTY, CA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: Hall of Justice		
CASE NAME: Allison v. International Business Machines Corp., et al.		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: 37-2007-00074885-CU-OE-CTL JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

BY FAX

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <input type="checkbox"/> Other PIP/DAM (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DAM (23) <input type="checkbox"/> Non-PIP/DAM (Other) Tort <input type="checkbox"/> Business tort/air/air business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (10) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DAM tort (35) <input type="checkbox"/> Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<input type="checkbox"/> Contract <input type="checkbox"/> Breach of contract/warranty (05) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (07) <input type="checkbox"/> Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <input type="checkbox"/> Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition for arbitration award (11) <input type="checkbox"/> Will of mandate (02) <input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (26) <input type="checkbox"/> Environmental/Tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) <input type="checkbox"/> Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <input type="checkbox"/> Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	--	--

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input checked="" type="checkbox"/> Large number of witnesses   |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence  | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision   |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify):
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-016.)

Date: September 10, 2007

Steven M. Tindall

(TYPE OR PRINT NAME)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use  
 Judicial Council of California  
 CM-010 (Rev. July 1, 2007)

## CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 3.220, 3.221, 3.400-3.403, 3.740  
 Cal. Standards of Judicial Administration, art. 3, § 10  
 www.courtinfo.ca.gov

Amesbury LegalNet, Inc.  
 www.PossibleForThe.com

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 685-8028	
PLAINTIFF(S) / PETITIONER(S): Paula Allison	
DEFENDANT(S) / RESPONDENT(S): International Business Machines Corporation	
ALLISON VS. INTERNATIONAL BUSINESS MACHINES CORPORATION	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2007-00074885-CU-OE-CTL

Judge: William R. Nevitt, Jr.

Department: C-84

COMPLAINT/PETITION FILED: 09/10/2007

**CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL  
REQUIREMENTS LISTED BELOW**

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

**COMPLAINTS:** Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

**Auto Tort**  
 Auto (22)—Personal Injury/Property Damage/Wrongful Death  
 Uninsured Motorist (45) (If the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)  
**Other PUPDWD (Personal Injury/Property Damage/Wrongful Death) Tort**  
 Asbestos (04)  
 Asbestos Property Damage  
 Asbestos Personal Injury/Wrongful Death  
 Product Liability (not asbestos or toxic/environmental) (24)  
 Medical Malpractice (46)  
 Medical Malpractice—Physicians & Surgeons  
 Other Professional Health Care Malpractice  
**Other PUPDWD (23)**  
 Premises Liability (e.g., slip and fall)  
 Intentional Bodily Injury/PDWD (e.g., assault, vandalism)  
 Intentional Infliction of Emotional Distress  
 Negligent Infliction of Emotional Distress  
 Other PUPDWD  
**Non-PUPDWD (Other) Tort**  
 Business Tort/Unfair Business Practice (07)  
 Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
 Defamation (e.g., slander, libel) (13)  
 Fraud (16)  
 Intellectual Property (19)  
 Professional Negligence (25)  
 Legal Malpractice  
 Other Professional Malpractice (not medical or legal)  
 Other Non-PUPDWD Tort (35)  
**Employment**  
 Wrongful Termination (38)  
 Other Employment (15)

**Contract**  
 Breach of Contract/Warranty (05)  
 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)  
 Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)  
 Negligent Breach of Contract/Warranty  
 Other Breach of Contract/Warranty  
 Collections (e.g., money owed, open bank accounts) (09)  
 Collection Case—Seller Plaintiff  
 Other Promissory Note/Collections Case  
 Insurance Coverage (not provisionally complex) (18)  
 Auto Subrogation  
 Other Coverage  
**Other Contract (37)**  
 Contractual Fraud  
 Other Contract Dispute  
**Real Property**  
 Eminent Domain/Inverse Condemnation (14)  
 Wrongful Eviction (33)  
 Other Real Property (e.g., quiet title) (26)  
 Viti of Possession of Real Property  
 Mortgage Foreclosure  
 Quiet Title  
 Other Real Property (not eminent domain, landlord/tenant, or foreclosure)  
**Unlawful Detainer**  
 Commercial (31)  
 Residential (32)  
 Drugs (36) (If the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)  
**Judicial Review**  
 Asset Forfeiture (06)  
 Petition Re: Arbitration Award (11)  
 Writ of Mandate (02)  
 Writ—Administrative Mandamus  
 Writ—Mandamus on Limited Court Case Matter  
 Writ—Other Limited Court Case Review  
 Other Judicial Review (39)  
 Review of Health Officer Order  
 Notice of Appeal—Labor Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**  
 Antitrust/Trade Regulation (03)  
 Construction Defect (10)  
 Claims Involving Mass Tort (40)  
 Securities Litigation (28)  
 Environmental/Toxic Tort (30)  
 Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)  
 Enforcement of Judgment  
 Enforcement of Judgment (20)  
 Abstract of Judgment (Out of County)  
 Confession of Judgment (non-domestic relations)  
 Sister State Judgment  
 Administrative Agency Award (not unpaid taxes)  
 Petition/Certification of Entry of Judgment on Unpaid Taxes  
 Other Enforcement of Judgment Case  
**Miscellaneous Civil Complaint**  
 RICO (27)  
 Other Complaint (not specified above) (42)  
 Declaratory Relief Only  
 Injunctive Relief Only (non-harassment)  
 Mechanics Lien  
 Other Commercial Complaint Case (non-tort/non-complex)  
 Other Civil Complaint (non-tort/non-complex)  
**Miscellaneous Civil Petition**  
 Partnership and Corporate Governance (21)  
 Other Petition (not specified above) (43)  
 Civil Harassment  
 Workplace Violence  
 Elder/Dependent Adult Abuse  
 Election Contest  
 Petition for Name Change  
 Petition for Relief From Late Claim  
 Other Civil Petition

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2007-00074685-CU-OE-CTL CASE TITLE: Allison vs. International Business Machines Corporation

**NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE**

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

**ADR POLICY**

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR - i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

**ADR OPTIONS**

**1) CIVIL MEDIATION PROGRAM:** The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non-binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute - the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

**Assignment to Mediation, Cost and Timelines:** Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for court-referred mediation: \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

**2) JUDICIAL ARBITRATION:** Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

**Assignment to Arbitration, Cost and Timelines:** Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court



3) **SETTLEMENT CONFERENCES:** The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference Judge.

4) **OTHER VOLUNTARY ADR:** Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

**ADDITIONAL ADR INFORMATION:** For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	<b>FOR COURT USE ONLY</b>
PLAINTIFF(S): Paula Allison	
DEFENDANT(S): International Business Machines Corporation	
SHORT TITLE: ALLISON VS. INTERNATIONAL BUSINESS MACHINES CORPORATION	
<b>STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)</b>	CASE NUMBER: 37-2007-00074885-CU-OE-CTL

Judge: William R. Nevitt, Jr.

Department: C-64

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

☐ Court-Referenced Mediation Program

☐ Court-Ordered Nonbinding Arbitration

☐ Private Neutral Evaluation

☐ Court-Ordered Binding Arbitration (Stipulated)

☐ Private Mini-Trial

☐ Private Reference to General Referee

☐ Private Summary Jury Trial

☐ Private Reference to Judge

☐ Private Settlement Conference with Private Neutral

☐ Private Binding Arbitration

☐ Other (specify): \_\_\_\_\_

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral (Name) \_\_\_\_\_

Alternate: (mediation &amp; arbitration only) \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1386. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 08/10/2007

JUDGE OF THE SUPERIOR COURT

SSC CIV-439 (Rev 01-07)

STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION

Page 1



**CT CORPORATION**  
A WoltersKluwer Company

**Service of Process  
Transmittal**

09/12/2007

Log Number 512584620



**TO:** Alec S Berman, Attorney  
IBM Corporation  
1133 Westchester Avenue, MD-140  
White Plains, NY, 10604

**RE:** Process Served in California

**FOR:** International Business Machines Corporation (Domestic State: NY)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

<b>TITLE OF ACTION:</b>	Paula Allison, etc., Pltf. vs. International Business Machines Corporation, et al., Dfts.
<b>DOCUMENT(S) SERVED:</b>	Summons, Complaint, Cover Sheet, Notice, Stipulation Form, Attachment(s)
<b>COURT/AGENCY:</b>	San Diego County - Central District - Superior Court, CA Case # 37200700074885CUOECTL
<b>NATURE OF ACTION:</b>	Employee Litigation - Unpaid Wages - Request that IBM is enjoined to cease and desist from unlawful activities in violation of California Business and Professions Code
<b>ON WHOM PROCESS WAS SERVED:</b>	C T Corporation System, Los Angeles, CA
<b>DATE AND HOUR OF SERVICE:</b>	By Process Server on 09/12/2007 at 15:00
<b>APPEARANCE OR ANSWER DUE:</b>	Within 30 days after service
<b>ATTORNEY(S) / SENDER(S):</b>	Steven M. Tindall Rukin Hyland Doria & Tindall, LLP 100 Pine Street Suite 725 San Francisco, CA, 94111 415 421 1800
<b>ACTION ITEMS:</b>	Telephone, Alec S Berman , 914-642-5847 SOP Papers with Transmittal, via Fed Ex 2 Day, 791387279930
<b>SIGNED:</b>	C T Corporation System
<b>PER:</b>	Dianne Christman
<b>ADDRESS:</b>	818 West Seventh Street Los Angeles, CA, 90017
<b>TELEPHONE:</b>	213-337-4815

Page 1 of 1 / WM

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of the package only, not of its contents.

9/12/07 @ 3:21 PM

COPY  
SUM-100**SUMMONS  
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):****INTERNATIONAL BUSINESS MACHINES CORPORATION, and  
DOES 1 through 50, inclusive,****YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):****PAULA ALLISON, individually and on behalf of all others similarly  
situated,**

07 SEP 10 PM 4:00

SAN DIEGO COUNTY, CA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.legalhelpcalifornia.org](http://www.legalhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

**TU HAS 30 DÍAS DE CALENDARIO después de que se te entreguen estos citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante.** Una carta o una llamada telefónica no lo protegerá. Si respondes por escrito tiene que estar en formato legal correcto al día que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.legalhelpcalifornia.org](http://www.legalhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es:  
San Diego Superior Court, Hall of Justice,  
330 West Broadway, San Diego, CA 92101

CASE NUMBER:  
(Número del Caso) 37-2007-00074685-CU-0E-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es:  
Steven M. Tindall, Rnkin Hyland Doris & Tindall LLP,  
100 Pine Street, Suite 725, San Francisco, CA 94111; 415-421-1800.

DATE: SEP 10 2007  
(Fecha)Clerk, by  
(Secretario)

IMELDA CALINE IM

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): International Business Machines Corporation

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (dissolved corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.80 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 143429 - SR**

**October 12, 2007  
13:28:47**

**Civ Fil Non-Pris**

USAO #.: 07CV1977 CIV. FIL.

Judge.: LARRY A BURNS

Amount.: \$350.00 CK

Check#.: BC#D3112117

**Total-> \$350.00**

FROM: ALLISON V. INTL. BUSINESS MACH  
CIVIL FILING

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

ORIGINAL

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

PAULA ALLISON, individually and on behalf of all others similarly situated

## DEFENDANTS

INTERNATIONAL BUSINESS MACHINES CORPORATION,  
and DOES 1 through 50, inclusive

(b) County of Residence of First Listed Plaintiff San Diego, California  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Armonk, New York

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED IN THE CASE.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Steven M. Tindall  
Rukin Hyland Doria & Tindall LLP  
100 Pine Street, Suite 725  
San Francisco, CA 94111  
Tel: 415-421-1800

Attorneys (If Known)  
Donna M. Mezias, SBN 111902  
Catherine S. Nasser, SBN 246191  
Jones Day  
555 California Street, 26<sup>th</sup> FL  
San Francisco, CA 94104  
Tel: 415-626-3939

DEPUTY BY FAX

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities—Employment <input type="checkbox"/> 446 Amer. w/Disabilities—Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
				<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 28 U.S.C. Sections 1332 and 1332 (d) (as amended by the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 14).

Brief description of cause:

This case is being removed to federal court based on traditional diversity and The Class Action Fairness Act

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
October 12, 2007

SIGNATURE OF ATTORNEY OF RECORD  
Catherine S. Nasser

FOR OFFICE USE ONLY

RECEIPT #

143429

AMOUNT

\$350.

APPLYING IFP

JUDGE

MAG. JUDGE

American LegalNet, Inc. www.USCourtForms.com